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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/879,117	06/13/2001	Johan Wanselin	003300-794	3882

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EXAMINER

CHORBAJI, MONZER R

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 04/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/879,117

Applicant(s)

WANSELIN ET AL.

Examiner

MONZER R. CHORBAJI

Art Unit

1744

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 March 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-20.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s).
13. ☐ Other: _____.


GLADYS JP CORCORAN
SUPERVISORY PATENT EXAMINER

Continuation of 5. Applicant's reply has overcome the following rejection(s): The 112, paragraphs I and II rejections recited in the final action dated 01/25/2006 have been withdrawn..

Continuation of 11. does NOT place the application in condition for allowance because:

Response to Arguments

On page 4 of the Response, applicant argues that, "The vertical frames 20 and 22 are connected to upper frame element 28, which element is secured to chamber 12 (col.2, lines 60-61). Hence, it is the bottom of the chamber that is fastened to the horizontal frame element 28, not the front and rear portions as recited in claim 1. Further, there is no disclosure that the chamber 12 is or is intended to be releasable from the unit 10." The examiner disagrees. The instant claims are apparatus claims and intended use does not further limit the scope of the claims. The chamber of the Houston reference is capable of being releasably mounted within the frame of the sterilization device as shown in figure 1. In evaluating the Houston reference, the examiner is not limited by interpreting the structures in the reference versus the claims as long as such structures are equivalent. The front portion of chamber 12 is the unlabeled region in chamber 12 from the front opening to the point where 20 connects with the chamber as shown in figure 1 and the rear portion of chamber 12 is the unlabeled region in chamber 12 from integral steam inlet 16 to the point where 22 connects with the chamber. Therefore, the front and rear portions of the chamber are reasonably connected to the upper frame 28. It is noted that the claims do not require a direct releasable connection between the front portion to the housing and the rear portion to the housing as implied by Applicant's argument.

On page 4 of the Response, applicant argues that, "The sterilization unit 10 includes a front panel 60 which is fixed to the sterilization unit 10 to provide user controls 70 and access to the chamber interior. Referring to Figure 7, in conjunction with Figure 1, it is clear that the opening in the front panel 60 is not intended for release of the chamber 12 therethrough." The examiner disagrees. As mentioned above, the instant claims are apparatus claims and intended use does not further limit the scope of the claims. In addition, the fact that the front panel is secured to the sterilization chamber does not mean that that the front panel and the chamber can be disconnected from each other. Both parts are capable of being joined and disjoined.

On pages 4-5 of the Response, applicant argues that, "That is, the polymeric container disclosed in Spence is better known in the art as a sterilization cassette and it cannot function by itself as a sterilization chamber. See Declaration under 37 CFR 1.132." The examiner disagrees. First with respect to the Declaration, evidence submitted in the Declaration are applicant's own opinions and are not objective evidence. Second, the intended use of polymeric material does not further limit the scope of the instant claims. The Houston reference is silent with regard to the material used for constructing the chamber. It is known in the art to form a chamber from various materials, including steel and polymers. The Spence reference is merely an example in the art to show that it is known to form chambers from either stainless steel or plastics. One of ordinary skill in the art would understand and appreciate forming the chamber of the Houston reference out of plastic material according to the conventional specifications of building chambers to withstand high pressures and high temperatures.

On page 5 of the Response, applicant argues that, "Applicants respectfully traverse the examiner's reasoning in substituting the plastic container of Spence for an ASME-certified sterilization pressure chamber. Thus, it is not the same pressure conditions for a Spence container with filter means being equalized in a sterilization pressure chamber and a sterilization pressure chamber (ASME-certified)." The examiner disagrees. The ASME-certified sterilization pressure chamber analysis is related to chambers constructed of stainless steel and is irrelevant to the subject matter of the instant claims where the chamber is designed of polymeric material. Further, since steam is used in sterilizing items within the polymeric container of the Spence reference, such a container is capable of withstanding high steam pressure conditions. .